Before the

FEDERAL COMMUNICATIONS COMMISION

Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review of	)	CC Docket No. 99-216
Part 68 of the Commission's Rules and	)	
Regulations	)	

To: The Commission

Petition For Reconsideration

Teccor Electronics hereby respectfully requests the Commission to reconsider aspects of the Commission's Report and Order adopted in the above-captioned proceeding.[1] Many members have been designated as Telecommunications Certification Bodies ("TCB") under the FCC's program to accredit conformity assessment organizations to certify telecommunications equipment in accordance with FCC regulations.

Teccor generally supports the Commission's decision to privatize the formulation of the technical requirements of Part 68. However, the use of a Supplier's Declaration of Conformity ("SDOC") in which testing can be performed by an unaccredited test lab raises concerns as to the competence and the work quality of the test lab as well as the test lab's interpretation of fail-safe criteria for compliance. This aspect is especially crucial when it comes to assessing compliance with the disabilities requirements in Part 68[2].

Teccor supports laboratory accreditation because it is an international means of assessing the competence of a laboratory to give a measure of confidence to persons relying on the data produced by that laboratory in the specific area that has been assessed.

A SDoC is intended to provide confidence to acceptance interests using a process carried out by, or under the direct control of, the supplier or producer. As with all other forms of conformity assessment, the acceptability of a supplier's declaration is solely determined by acceptance interests. By definition, a supplier's declaration is accepted only when it fully satisfies the confidence

[1] *In the Matter of 2000 Biennial Review of Part 68 of the Commission's Rules and Regulations,* CC Docket 99-216, FCC 00-400, (rel. December 21, 2000); "Report and Order").

[2] 47 CFR Part 68, Sections 68.316 *Hearing Aid Compatibility* & 68.317.*Hearing Aid Compatibility Volume Control.*

needs of acceptance interests that compliance will be achieved and maintained to the degree necessary. This is a critical concept when the conformity of the product can impact safety, health and protection of property. The reliability of the telecommunications system is directly related to health, safety and protection of property.

The process used as a basis for a supplier's declaration is generally at the discretion of the supplier, or producer and the supplier or producer carries out or controls the performance of all activities associated with the declaration process.

Crucial Differences between TCB Certification, FCC DoC and supplier's declaration of conformity

The testing of equipment to determine compliance with FCC requirements is one of the essential aspects of conformity assessment for telecommunication equipment. The data generated by these tests play a critical role in determining if a piece of equipment will operate on the established telecommunications infrastructure without reducing the reliability of our critical communications system.

TCB Certification

TCBs are required to meet accreditation requirements that include laboratory testing and certification functions. Integral to these accreditation requirements is freedom from conflict of interest. These accreditation requirement results in a high level of confidence in the objectivity and accuracy of the test data generated and certification activities conducted by TCBs. Additionally, TCBs are required to perform surveillance to evaluate certified equipment's continuing compliance with regulatory requirements. Therefore, equipment certified by TCBs has the greatest level of confidence that regulatory requirements are met of the three conformity assessment procedures being discussed.

FCC DoC

FCC's DoC procedures require that test data used to support a Declaration of Conformity be generated at a laboratory (including a producer/supplier's laboratory) that has been accredited to conduct such testing by a suitable accreditation body. This accreditation provides a degree of confidence in test methods and equipment used as well as the test data generated. This test data is then used to support the Declaration of Conformity to FCC requirements made by the producer/supplier. No surveillance of equipment's continuing compliance is performed under the FCC DoC process. Since the laboratories are accredited for testing only and there is no surveillance, there is less confidence that equipment meets and continues to meet regulatory requirements than equipment certified by a TCB, but more confidence than equipment brought to the market based on a supplier's declaration of conformity.

Supplier's declaration of conformity

A supplier's declaration of conformity may be based on test data generated at any laboratory that the producer/supplier chooses. This laboratory is not required to demonstrate accreditation to any regulatory or standard specification. Without appropriate laboratory accreditation, there may not be sufficient confidence in the test methods and equipment used and the test data generated. When this test data is used to support a supplier's declaration of conformity there may not be sufficient confidence that the supplier's declaration of conformity adequately demonstrates the equipment's conformity with FCC regulations. No surveillance of equipment's continuing compliance is performed under the supplier's declaration process described in the Report and Order FCC 00-400.

Time to Market Issue

Many who encourage the use of a supplier's declaration of conformity justify their viewpoint by attributing delays in bringing products to the market on government or third party conformity assessment programs. Laboratory accreditation takes place independently from equipment testing and does not delay the testing carried out by a competent laboratory. Existing certified laboratories could and would test as quickly as the suggested SDoC laboratory plan. Therefore, allowing a supplier's declaration of conformity without requiring the supporting data to be generated by an accredited laboratory forgoes confidence with no gain in time to market for equipment.

Redesign times to address non-compliant aspects of a product construction and/or performance are often considered in overall producer/supplier turnaround time, but this is out of the hands of the government or third party. Products that are designed to fully comply with relevant standards generally have much shorter submission to certification times.

Inequity of Conformity Assessment Procedures

We understand that the Report and Order for Part 68 Streamlining will allow either TCB Certification or a supplier's declaration of conformity. This will create an inequity in accreditation obligations between producer/suppliers that choose to use TCB certification and those that choose a supplier's declaration of conformity. TCBs are required to maintain accreditation for laboratory testing and certification functions including the performance of surveillance. However, SDoC's will have no accreditation obligation for the laboratory that generates test data, which is used to support the supplier's declaration of conformity. Furthermore, there is no required surveillance to evaluate continuing compliance with regulatory requirements.

Post Market Surveillance

Almost without exception advocates of the use of supplier's declaration of conformity insist that it must be accompanied by meaningful post market surveillance. Post-market surveillance is the mechanism by which the regulatory authorities attempt to ensure that products in the market comply with the regulatory requirements. It requires regulatory resources and technical competence with requirements. The regulatory authority usually carries out post-market surveillance:

1) obtaining the producer/supplier's technical file that supports the supplier's declaration of conformity,
2) determining if the technical file demonstrates compliance with the requirements,
3) procuring products from the market, and
4) determining if the product meets the regulatory requirements.

The regulator must facilitate the withdrawal of noncompliant products from the market via a recall. Effective post market surveillance requires a substantial regulatory resource commitment. US experience in other sectors such as consumer products demonstrates that a well conducted recall may be successful in removing 15 to 20% of the noncompliant products from the market. This means that 80 to 85% of the noncompliant products may remain in the market and in the case of telecommunications equipment potentially still connected to the communications system.

Compared to the TCB equipment certification requirements, which include surveillance carried out by the TCB, a supplier's declaration of conformity with regulatory post market surveillance system shifts a significant resource burden from the producer/supplier to the regulatory authority. Effective TCB premarket certification, which includes surveillance, significantly limits needed regulatory post market activities by providing a greater degree of confidence in equipment's compliance with regulatory requirements before they enter the market.

The European Union has product regulatory schemes based on a supplier's declaration of conformity and regulatory post market surveillance. In practice resources for conducting post market surveillance are scarce. Although current post-market surveillance programs in the EU are limited, these limited programs are finding a significant number of products in the EU market that do not comply with the applicable regulatory requirements especially in the area of electromagnetic compatibility.

Let us consider the situation under a SDoC process where the test lab that performs measurements for the Part 68 accessibilities requirements, such as the Hearing-Aid Compatibility ("HAC") and Volume Control criteria, is unfamiliar with

the testing or the interpretation of the criteria. These manufacturers who self-declare under the SDOC scheme could market products that do not comply. The disabled community has been promised by the Commission in this same Docket that the accessibilities requirements in Part 68 will not be modified or streamlined. Yet, the Commission significantly changed these requirements by allowing SDOC for products falling under the accessibilities requirements, notably volume control and HAC.

Under the current system, there must be test data showing compliance being submitted to the FCC or to a third party certifier (the TCB); this provides a level of scrutiny that is being eliminated under the SDOC scheme. It may be argued that the HAC magnetic field requirements have been around since 1989 and most handsets are now HAC compliant. However, the volume control requirements have only been adopted by Part 68 last year. Many products are still being re-qualified to the criteria of volume control and initial testing shows that most telephones fail the volume control criteria and need to be redesigned. Testing for volume control requires specialized test equipment and testing competence that many test houses do not possess. In addition, with the new streamlined product compliance assessment through the use of SDOC, equipment falling under the accessibilities requirements (e.g. telephone sets) can now be self-declared. If the test lab does not have the competence to ensure compliant test data and/or the product is self-declared compliant without being tested, the bar for acceptance has been lowered. *This is a significant impact on the accessibility requirements.*

The disabled community is entitled to be warned about this new relaxed criterion for acceptance of products that affect their health and safety so that they can continue to be protected. Yet the disabled community was again and again led to believe that the Commission is not changing the accessibilities requirements in Part 68. ***Lowering the bar for acceptance of products via the SDOC does have an impact on access to telecommunications networks for the disabled.***

The adoption of the complaint procedures from Section 255 into Part 68 is not adequate because currently the non-compliant product is examined before placement on the market whereas with the new SDOC scheme, a disabled person can only complain about it after the fact. If he could not communicate (hear) on his phone with an emergency personnel on the other side of the line and due to this, help arrived too late for him, he would not be around to complain later on. Certainly his estate can sue for damages but can the Commission really allow even one occurrence of this type of situation to happen with the FCC's mandate to protect the public interest with respect to all access to communications networks? Congress has placed the disabilities requirements under the mandatory protection of Part 68 for good reasons. If a non-compliant product is found to harm the network, the carriers can disconnect the product. A

disabled person would be long dead before the product is proven to be non-compliant.

Teccor has also noticed the overwhelming emphasis given to the accreditation of the new Administrative Council with no fewer than 17 citations to "accredited" or similar words in the discussion to achieve the outcome of uniformity and openness. The inconsistency of the Commission is revealed in Section IV (SDoC). This section does not contain any benefit of accreditation to assure the uniformity of product compliance. We find this lack of balance in the document disturbing. Teccor believes a balanced approach is more logical. An accreditation of the conformity assessment process, both for TCBs and, as an alternative, using the Declaration of Conformity process described in Part 2 of the FCC rules.

Teccor agrees with the Commission (clause 63) that Hearing Aid Compatibility and Volume Control Rules are sufficiently important aspects of handicapped access to warrant their retention in the streamlined Part 68 rules for terminal equipment. However, this added importance is lost at the point where compliance to the privatized rules and the streamlined Part 68 rules is indicated: in the Supplier's Declaration of Conformity, where compliance to both is claimed. If the Commission intends to assert the importance of handicapped access, it can do so more effectively by demanding a higher standard of demonstration, such as TCB certification, for those features.

Teccor agrees with the Commission's observation (clause 21) that network harms rarely occur, but we must take exception to the Commission's belief that a broad understanding of the relevant expertise among manufacturers is a major factor. ACIL is the national trade association representing independent, commercial scientific and engineering firms. Its members are professional services firms engaged in testing, product certification, consulting, and research and development. ACIL's 350 members operate over 1,500 facilities across the U.S. and abroad. These laboratory members report that fully 50% of all first-time submissions for terminal equipment testing fail one or more of the Part 68 harms criteria. These submissions are from small manufacturers who believed their products were compliant, and who would – under the SDoC regime – place their products on the US market. By its own admission in the R&O (clause 53), the present Part 68 Rules are not well understood.

The Commission's argument (clause 97) that the Supplier's Declaration of Conformity process as described in the R&O conforms to a process used in the EU does not stand up to scrutiny. First, the Commission has imposed requirements of filing and residency for its SDoC which are not a part of the ISO Guide 22 document referenced. Second, an EU Declaration of Conformity for terminal equipment does not require the manufacturer to comply with any requirements whatsoever for network harms nor handicapped access.

Teccor is confused by the following quote: "With few exceptions, quality and performance factors of terminal equipment are served by consumer protection laws and by the operation of the free market. To the limited extent that Part 68 addresses these functions (*e.g.*, inside wire), we do not propose at this time to privatize them because we recently adopted these rules to protect against demonstrated problems in the market." *See infra* para. 65. **It is interesting that the commission is more concerned about inside wiring and its quality than the actual equipment that is attached.**

Summary

TCB certification provides the highest level of confidence that products comply with regulatory requirements. The FCC's DoC procedures allow a producer/supplier to declare conformity based on test data from an accredited laboratory. This provides more confidence than a supplier's declaration of conformity without adding any time to market for compliant equipment. The FCC DoC should not allow the SDoC process described in FCC Report and Order FCC 00-400.

Teccor requests that the FCC modify the Report and Order to require producers/suppliers use accredited laboratories to generate test data that supports their product's demonstration of compliance with regulatory requirements. Conformity of telecommunications equipment subject to Part 68 requirements should be through TCB certification or FCC DoC procedures.

These options will allow for a very flexible conformity assessment process while maintaining confidence in the conformity of equipment. The TCB certification and FCC DoC procedures will minimize inequities between conformity assessment procedures and limit the FCC's market surveillance burden.

Respectfully Submitted,

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